SUPREME COURT OF THE UNITED STATES.

No. 513.

THE UNITED STATES, PLAINTIFFS,

vs.

JOHN W. NORTON.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED APRIL 3, 1875.

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1 Circuit court of the United States of America for the southern district of New York, in the second circuit.

At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, begun and held at the city of New York, within and for the district and circuit aforesaid, on the second Wednesday of January, in the year of our Lord one thousand eight hundred and seventy-four, and continued by adjournment to and including the twenty-first day of February, in the year of our Lord one thousand eight hundred and seventy-four.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The jurors of the United States of America within and for the district and circuit aforesaid, on their oath, present that John W. Norton, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the first day of August, in the year of our Lord one thousand eight hundred and seventy-one, at the southern district of New York, and within the jurisdiction of this court, he, said John W. Norton, being then and there a person
2 employed in the money-order office of the post-office of the city of New York, in the district and circuit aforesaid, did unlawfully and feloniously convert to his own use a very large amount of the moneys in the Treasury of the said United States, to wit, the sum of one hundred and fifteen thousand dollars, and of the value of one hundred and fifteen thousand dollars, all of said moneys being at the time of the conversion aforesaid money-order funds received at and belonging to the said money-order office, then and there against the peace of the United States of America and their dignity, and against the form of the statute of the said United States of America in such case made and provided.

SECOND COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present that John W. Norton, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the thirty-first day of March, in the year of Lord one thousand eight hundred and seventy, at the southern district of New York, and within the jurisdiction of this court, he, the said John W.
3 Norton, being then and there a person employed in the money-order office of the said United States at the city of New York, in the district and circuit aforesaid, did knowingly, unlawfully, and feloniously convert to his own use a very large amount, to wit, the sum of forty-five thousand dollars, and of the value of forty-five thousand dollars, all of the said moneys being at the time of the conversion aforesaid the property of the said United States, and in the Treasury of the United States, and money-order funds belonging to said money-order office, then and there against the peace of the United States of America and their dignity, and against the form of the statute of the said United States in such case made and provided.

THIRD COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present that John W. Norton, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the first day of August, in the year of our Lord one thousand eight hundred and seventy-one, at the southern district of New York, and within the jurisdiction of this court, he, the said John W.
4 Norton, being then and there a person employed in the money-order office of the post-office of the said United States at the city of New York, did convert to his own use a very large amount, to

wit, the sum and amount of one hundred and fifteen thousand dollars, and of the value of one hundred and fifteen thousand dollars, being divers bills known as bills of national-banking associations, amounting in the whole to the sum of fifty thousand dollars, and of the value of fifty thousand dollars; divers notes called Treasury-notes, amounting in the whole to the sum of twenty-five thousand dollars, and of the value of twenty-five thousand dollars; divers notes called United States notes amounting in the whole to the sum of fifteen thousand dollars, and of the value of fifteen thousand dollars; divers notes called legal-tender notes, amounting in the whole to the sum of ten thousand dollars, and of the value of ten thousand dollars; divers gold coins of the United States, to wit, one hundred and fifty pieces of gold coin of the United States of the denomination and kind known as double-eagles, amounting in the whole to the sum and amount of three thousand dollars, and of the value of three thousand dollars; divers pieces of gold coin of the United States, to wit, three hundred pieces of gold coin of the United States of the denomination and kind known as eagles, amounting in the whole to the sum and amount of three thousand dollars, and of the value of three thousand; divers pieces of gold coin of the United States, to wit, four hundred pieces of gold-coin of the United States of the denomination and kind known as half-eagles, amounting in the whole to the sum and amount of two thousand dollars, and of the value of two thousand dollars; divers pieces of gold coin of the United States, to wit, one thousand pieces of gold coin of the United States of the denomination and kind known as three-dollar gold pieces, amounting in the whole to the sum and amount of three thousand dollars, and of the value of three thousand dollars; divers pieces of gold coin of the United States, to wit, eight hundred pieces of gold coin of the United States of the denomination and kind known as quarter-eagles, amounting in the whole to the sum and amount of two thousand dollars, and of the value of two thousand dollars; divers pieces of gold coin of the United States, to wit, one thousand pieces of gold coin of the United States, of the denomination and kind known as gold dollars, amounting in the whole to the sum and amount of one thousand dollars, and of the value of one thousand dollars; divers coins known as silver coins of the United States, to wit, four thousand silver coins of the United States, amounting in the whole to the sum and amount of one thousand dollars, of the value of one thousand dollars, a more particular description of which aforesaid notes, bills, and coins the jurors aforesaid are unable to give; all the said notes, bills, and coins being at the time of the conversion and embezzlement aforesaid the property and public moneys of the United States of America, and in the Treasury of the said United States, and known as money-order funds, and received as such at said money-order office, then and there against the peace of the United States of America and their dignity, and against the form of the statute of the said United States of America in such case made and provided.

5

6

7 FOURTH COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present that John W. Norton, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the third day of August, in the year of our Lord one thousand eight hundred and seventy-one, at the southern district of New York, and within the jurisdiction of this court, he, the said John W. Norton, being then and there a person employed in the money-order office of the post-office at the city of New York, to wit, clerk in the said money-order office, did unlawfully, knowingly, wilfully, and feloniously

convert to his own use a very large amount, to wit, the sum and amount of one thousand three hundred and fifty-nine dollars, of the moneys in the Treasury of the United States, the said moneys being then and there money-order funds and belonging to the account of the said money-order office, then and there against the peace of the said United States of America and their dignity, and against the form of the statute of the said United States of America in such case made and provided.

8 FIFTH COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present that, at the time hereinafter mentioned, the sum and amount of one thousand dollars, lawful money of the United States, and of the value of one thousand dollars, had been duly received at and transferred to the money-order office at the post-office in the city of New York; that said moneys, by reason of their receipt and transfer as aforesaid, became money-order funds and moneys in the Treasury of the United States, and at the time hereinafter mentioned John W. Norton was a person employed in said money-order office, and entrusted with said money for the use of the said money-order office. And the jurors aforesaid, on their oath aforesaid, do further present that said John W. Norton, yeoman, late of the city and county of New York, in the circuit aforesaid and southern district of New York, and within the jurisdiction of this court, heretofore, to wit, on the eleventh day of August, in the year of our Lord one thousand eight hundred and sixty-nine,

9 being then and there a person employed as aforesaid, did unlawfully, knowingly, wilfully, and feloniously convert to his own use the said money then and there entrusted to him, the said Norton, as aforesaid, then and there against the peace of the United States of America, and their dignity, and against the form of the statute of the said United States of America in such case made and provided.

SIXTH COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present that, at the time hereinafter mentioned, John W. Norton was a person employed in and connected with the business of the money-order office, to wit, clerk in the money-order office at the post-office in the city of New York, in the southern district of New York; that as such clerk said Norton did receive for the use of said money-order office the sum and amount of one thousand dollars, which said money had been received for the sale of money-orders, and was then and there monies in the Treasury of the United States and belonging to said money-order office. And the jurors aforesaid, on their oath aforesaid,

10 do further present that said John W. Norton, yeoman, late of the city and county of New York, in the district and circuit aforesaid, heretofore, to wit, on the eleventh day of August, in the year of our Lord one thousand eight hundred and sixty-nine, at the southern district of New York, and within the jurisdiction of this court, did unlawfully, knowingly, willfully, and feloniously convert to his own use said one thousand dollars, then and there being monies received from the sale of money-orders and in the Treasury of the United States, and belonging to the money-order funds of the money-order office of the post-office of the city of New York, in the district aforesaid, he, the said Norton, being then and there a person employed in and connected with the business and operations of the money-order offices as aforesaid, and entrusted with said money for the use of said money-order office, then and there against the peace of the United States of America and their dignity, and against the form of the statute of the said United States of America in such case made and provided.

11 SEVENTH COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present that, at the time hereinafter mentioned,

the sum and amount of two thousand dollars, lawful money of the United States and of the value of two thousand dollars, had been duly received at and transferred to the money-order office at the post-office in the city of New York; that said moneys, by reason of their receipt and transfer as aforesaid, became money-order funds and moneys in the Treasury of the United States, and at the time hereinafter mentioned, John W. Norton was a person employed in said money-order office, and entrusted with said money for the use of the said money-order office. And the jurors aforesaid, on their oath aforesaid, do further present that the said John W. Norton, yeoman, late of the city and county of New York, in the circuit aforesaid, and southern district of New York, and within the jurisdiction of this court, heretofore, to wit, on the twentieth day of September, in the year of our Lord one thousand eight hundred and sixty-nine, being then and there a person employed
12 as aforesaid, did unlawfully, knowingly, wilfully, and feloniously convert to his own use the said money then and there entrusted to him, the said Norton, as aforesaid, then and there against the peace of the United States of America, and their dignity, and against the form of the statute of the said United States of America in such case made and provided.

EIGHTH COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present that, at the time hereinafter mentioned, John W. Norton was a person employed in and connected with the business of the money-order offices, to wit, clerk in the money-order office at the post-office in the city of New York, in the southern district of New York. That as such clerk said Norton did receive for the use of said money-order office the sum and amount of two thousand dollars, which said money had been received for the sale of money-orders, and was then and there monies in the Treasury of the United States and belonging to said money-order office. And the jurors aforesaid, on their oath
13 aforesaid, do further present that said John W. Norton, yeoman, late of the city and county of New York, in the district and circuit aforesaid, heretofore, to wit, on the twentieth day of September, in the year of our Lord one thousand eight hundred and sixty-nine, at the southern district of New York, and within the jurisdiction of this court, did unlawfully, knowingly, willfully, and feloniously convert to his own use said two thousand dollars, then and there being monies received from the sale of money-orders and in the Treasury of the United States, and belonging to the money-order funds of the money-order office of the post-office of the city of New York, in the district aforesaid, he, the said Norton, being then and there a person employed in and connected with the business and operations of the money-order offices as aforesaid, and entrusted with said money for the use of said money-order office, then and there against the peace of the United States of America, and their dignity, and against the form of the statute of the said United States of America in such case made and provided.

14 NINTH COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present that, at the time hereinafter mentioned, the sum and amount of one thousand dollars, lawful money of the United States, and of the value of one thousand dollars, had been duly received at and transferred to the money-order office at the post-office in the city of New York; that said moneys, by reason of their receipt and transfer as aforesaid, became money-order funds and moneys in the Treasury of the United States, and at the time hereinafter mentioned, John W. Norton was a person employed in said money-order office, and entrusted with said money for the use of the said money-order office. And

the jurors aforesaid, on their oaths aforesaid, do further present that the said John W. Norton, yeoman, late of the city and county of New York, in the circuit aforesaid, and southern district of New York, and within the jurisdiction of this court, heretofore, to wit, on the twenty-eighth day of September, in the year of our Lord one thousand eight hundred and sixty-nine, being then and there
15 a person employed as aforesaid, did unlawfully, knowingly, wilfully, and feloniously convert to his own use the said money then and there entrusted to him, the said Norton as aforesaid, then and there against the peace of the United States of America and their dignity, and against the form of the statute of the said United States of America in such case made and provided.

TENTH COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present that, at the time hereinafter mentioned, John W. Norton was a person employed in and connected with the business of the money-order offices, to wit, clerk in the money-order office at the post-office in the city of New York, in the southern district of New York. That, as such clerk, said Norton did receive for the use of said money-order office, the sum and amount of one thousand dollars, which said money had been received for the sale of money-orders, and was then and there monies in the Treasury of the United States, and belonging to said money-order office. And the jurors aforesaid, on their
16 oath aforesaid, do further present that, said John W. Norton, yeoman, late of the city and county of New York, in the district and circuit aforesaid, heretofore, to wit, on the twenty-eighth day of September, in the year of our Lord one thousand eight hundred and sixty-nine, at the southern district of New York, and within the jurisdiction of this court, did unlawfully, knowingly, willfully, and feloniously convert to his own use said one thousand dollars, then and there being monies received from the sale of money-orders, and in the Treasury of the United States, and belonging to the money-order funds of the money-order office of the post-office of the city of New York, in the district aforesaid, he, the said Norton, being then and there a person employed and connected with the business and operations of the money-order offices as aforesaid, and entrusted with said money for the use of said money-order office, then and there against the peace of the United States of America and their dignity, and against the form of the statute of the said United States of America in such case made and provided.

17 ELEVENTH COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present that, at the time hereinafter mentioned, the sum and amount of one thousand dollars, lawful money of the United States, and of the value of one thousand dollars, had been duly received at and transferred to the money-order office at the post-office in the city of New York; that said moneys, by reason of their receipt and transfer as aforesaid, became money-order funds and moneys in the Treasury of the United States, and at the time hereinafter mentioned John W. Norton was a person employed in said money-order office, and entrusted with said money for the use of the said money-order office. And the jurors aforesaid, on their oaths aforesaid, do further present that the said John W. Norton, yeoman, late of the city and county of New York, in the circuit aforesaid and southern district of New York, and within the jurisdiction of this court, heretofore, to wit, on the twenty-second day of January, in the year of our Lord one thousand eight hundred and seventy, being then and there a person employed as aforesaid, did unlawfully, knowingly, wilfully, and feloniously convert to his own

18 use the said money then and there entrusted to him, the said Norton as aforesaid, then and there against the peace of the United States of America and their dignity, and against the form of the statute of the said United States of America in such case made and provided.

TWELFTH COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present that, at the time hereinafter mentioned John W. Norton was a person employed in and connected with the business of the money-order offices, to wit, clerk in the money-order office at the post-office in the city of New York, in the southern district of New York; that, as such clerk, said Norton did receive for the use of said money-order office the sum and amount of one thousand dollars, which said money had been received for the sale of money-orders, and was then and there monies in the Treasury of the United States, and belonging to said money-order office. And the jurors aforesaid, on their oath aforesaid, do further present that said John W. Norton, yeo-
19 man, late of the city and county of New York, in the district and circuit aforesaid, heretofore, to wit, on the twenty-second day of January, in the year of our Lord one thousand eight hundred and seventy, at the southern district of New York, and within the jurisdiction of this court, did unlawfully, knowingly, wilfully, and feloniously convert to his own use said one thousand dollars, then and there being monies received from the sale of money-orders, and in the Treasury of the United States, and belonging to the money-order funds of the money-order office of the post-office of the city of New York, in the district aforesaid, he, the said Norton, being then and there a person employed in and connected with the business and operations of the money-order offices as aforesaid, and entrusted with said money for the use of said money-order office, then and there against the peace of the United States of America and their dignity, and against the form of the statute of the said United States of America in such case made and provided.

20 THIRTEENTH COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present that, at the time hereinafter mentioned, the sum and amount of four thousand dollars, lawful money of the United States, and of the value of four thousand dollars, had been duly received and transferred to the money-order office at the post-office in the city of New York; that said moneys, by reason of their receipt and transfer as aforesaid, became money-order funds, and moneys in the Treasury of the United States, and at the time hereinafter mentioned John W. Norton was a person employed in said money-order office, and entrusted with said money for the use of the said money-order office. And the jurors aforesaid, on their oath aforesaid, do further present that said John W. Norton, yeoman, late of the city and county of New York, in the circuit aforesaid and southern district of New York, and within the jurisdiction of this court, heretofore, to wit, on the second day of March, in the year of our Lord one thousand eight hundred and seventy, being then and there a person employed as aforesaid, did unlawfully, knowingly, wilfully, and feloniously
21 convert to his own use the said money then and there entrusted to him, the said Norton, as aforesaid, then and there against the peace of the United States of America and their dignity, and against the form of the statute of the said United States of America in such case made and provided.

FOURTEENTH COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present that, at the time hereinafter mentioned, John

W. Norton was a person employed in and connected with the business of the money-order offices, to wit, clerk in the money-order office at the post-office in the city of New York, in the southern district of New York; that as such clerk said Norton did receive for the use of said money-order office the sum and amount of four thousand dollars, which said money was then and there monies in the Treasury of the United States, and belonging to said money-order office. And the jurors aforesaid, on their oath aforesaid, do further present that said John W. Norton, yeoman, late of the city and county of New York, in
22 the district and circuit aforesaid, heretofore, to wit, on the second day of March, in the year of our Lord one thousand eight hundred and seventy, at the southern district of New York, and within the jurisdiction of this court, *and* unlawfully, knowingly, wilfully, and feloniously convert to his own use said four thousand dollars, then and there, being monies received from the sale of money-orders, and in the Treasury of the United States, and belonging to the money-order funds of the money-order office of the post-office at the city of New York, in the district aforesaid, he, the said Norton, being then and there a person employed in and connected with the business and operations of the money-order offices as aforesaid, and entrusted with said money for the use of said money-order office, then and there, against the peace of the United States of America and their dignity, and against the form of the statute of the said United States of America in such case made and provided.

23 FIFTEENTH COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present that, at the time hereinafter mentioned, the sum and amount of two thousand dollars, lawful money of the United States, and of the value of two thousand dollars, had been duly received and transferred to the money-order office at the post-office in the city of New York; that said moneys, by reason of their receipt and transfer as aforesaid, became money-order funds, and moneys in the Treasury of the United States, and at the time hereinafter mentioned John W. Norton was a person employed in said money-order office, and entrusted with said money for the use of the said money-order office. And the jurors aforesaid, on their oath aforesaid, do further present that said John W. Norton, yeoman, late of the city and county of New York, in the circuit aforesaid and southern district of New York, and within the jurisdiction of this court, heretofore, to wit, on the seventh day of February, in the year of our Lord one thousand eight hundred and seventy, being then and there a person employed as aforesaid, did
24 unlawfully, knowingly, wilfully, and feloniously, convert to his own use the said money then and there entrusted to him, the said Norton, as aforesaid, then and there against the peace of the United States of America and their dignity, and against the form of the statute of the said United States of America in such case made and provided.

SIXTEENTH COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present that, at the time hereinafter mentioned, John W. Norton was a person employed in and connected with the business of the money-order offices, to wit, clerk in the money-order office at the post-office in the city of New York, in the southern district of New York; that, as such clerk, said Norton did receive for the use of said money-order office the sum and amount of two thousand dollars, which said money was, then and there, monies in the Treasury of the United States belonging to said money-order office. And the jurors aforesaid, on their oath aforesaid, do further present that said John W. Norton, yeo-

man, late of the city and county of New York, in the district and circuit aforesaid, heretofore, to wit, on the seventh day of February, in the
25 year of our Lord one thousand eight hundred and seventy, at the southern district of New York, and within the jurisdiction of this court, did unlawfully, knowingly, willfully, and feloniously convert to his own use said two thousand dollars, then and there being monies in the Treasury of the United States, and belonging to the money-order funds of the money-order office of the post-office of the city of New York, in the district aforesaid, he, the said Norton, being then and there a person employed in, and connected with, the business and operations of the money-order offices as aforesaid, and entrusted with said money for the use of said money-order office, then and there against the peace of the United States of America and their dignity, and against the form of the statute of the said United States of America in such case made and provided.

SEVENTEENTH COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present that, at the time hereinafter mentioned, the sum and amount of four thousand dollars, lawful money of the United
26 States and of the value of four thousand dollars, had been duly received and transferred to the money-order office at the post-office in the city of New York; that moneys, by reason of their receipt and transfer as aforesaid, became money-order funds and moneys in the Treasury of the United States, and, at the time hereinafter mentioned, John W. Norton was a person employed in said money-order office, and entrusted with said money for the use of the said money-order office. And the jurors aforesaid, on their oath aforesaid, do further present that said John W. Norton, yeoman, late of the city and county of New York, in the circuit aforesaid, and southern district of New York, and within the jurisdiction of this court, heretofore, to wit, on the twenty-seventh day of January, in the year of our Lord one thousand eight hundred and seventy, being then and there a person employed as aforesaid, did unlawfully, knowingly, wilfully, and feloniously convert to his own use the said money then and there entrusted to him, the said Norton as aforesaid, then and there against the peace of the United States of America and their dignity, and against the form of the statute of the said United States of America in such case made and provided.

27 EIGHTEENTH COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present that, at the time hereinafter mentioned, John W. Norton was a person employed in and connected with the business of the money-order offices, to wit, clerk in the money-order office at the post-office in the city of New York, in the southern district of New York; that, as such clerk, said Norton did receive, for the use of said money-order office, the sum and amount of four thousand dollars, which said money was then and there monies in the Treasury of the United States, belonging to said money-order office. And the jurors aforesaid, on their oath aforesaid, do further present that said John W. Norton, yeoman, late of the city and county of New York, in the district and circuit aforesaid, heretofore, to wit, on the twenty-seventh day of January, in the year of our Lord one thousand eight hundred and seventy, at the southern district of New York, and within the jurisdiction of this court, did unlawfully, knowingly, wilfully, and
28 feloniously convert to his own use said four thousand dollars, then and therebeing moniesin the Treasury of the United States, and belonging to the money-order funds of the money-order office of the post-office of the city of New York, in the district aforesaid, he, the said Norton, being then and there a person employed in and connected

with the business and operations of the money-order office, as aforesaid, and entrusted with said money for the use of the said money-order office, then and there against the peace of the United States of America, and their dignity, and against the form of the statute of the said United States of America in such case made and provided.

NINETEENTH COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present that, at the time hereinafter mentioned, the sum and amount of forty-five thousand dollars, lawful money of the United States, and of the value of forty-five thousand dollars, had been duly received at and transferred to the money-order office at the post-office in the city of New York; that said moneys, by reason of their receipt and transfer as aforesaid, became money-order funds, and
29 moneys in the Treasury of the United States, and at the time hereinafter mentioned John W. Norton was a person employed in said money-order office, and entrusted with said money for the use of the said money-order office. And the jurors aforesaid, on their oath aforesaid, do further present that said John W. Norton, yeoman, late of the city and county of New York, in the circuit aforesaid, and southern district of New York, and within the jurisdiction of this court, heretofore, to wit, on the thirty-first day of March, in the year of our Lord one thousand eight hundred and seventy, being then and there a person employed as aforesaid, did unlawfully, knowingly, wilfully, and feloniously convert to his own use the said money then and there entrusted to him, the said Norton, as aforesaid, then and there against the peace of the United States of America and their dignity, and against the form of the statute of the said United States of America in such case made and provided.

30 TWENTIETH COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present that, at the time hereinafter mentioned, John W. Norton was a person employed in and connected with the business of the money-order offices, to wit, clerk in the money-order office at the post-office in the city of New York, in the southern district of New York. That as such clerk said Norton did receive for the use of said money-order office the sum and amount of forty-five thousand dollars, which said money was then and there monies in the Treasury of the United States, belonging to said money-order office. And the jurors aforesaid, on their oath aforesaid, do further present that said John W. Norton, yeoman, late of the city and county of New York, in the district and circuit aforesaid, heretofore, to wit, on the thirty-first day of March, in the year of our Lord one thousand eight hundred and seventy, at the southern district of New York, and within the jurisdiction of this court, did unlawfully, knowingly, wilfully, and feloniously
31 convert to his own use said forty-five thousand dollars, then and there being monies in the Treasury of the United States, and belonging to the money-order funds of the money-order office of the post-office of the city of New York, in the district aforesaid, he, the said Norton, being then and there a person employed in and connected with the business and operations of the money-order offices as aforesaid, and entrusted with said money for the use of said money-order office, then and there against the peace of the United States of America and their dignity, and against the form of the statute of the said United States of America in such case made and provided.

32 TWENTY-FIRST COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present that, at the time hereinafter mentioned the sum and amount of two thousand dollars, lawful money of the United States, and of the value of two thousand dollars, had been

duly received at and transferred to the money-order office, at the post-office in the city of New York; that said moneys, by reason of their receipt and transfer as aforesaid, became money-order funds and moneys in the Treasury of the United States, and at the time hereinafter mentioned John W. Norton was a person employed in said money-order office, and entrusted with said money for the use of the said money-order office. And the jurors aforesaid, on their oath aforesaid, do further present that said John W. Norton, yeoman, late of the city and county of New York, in the circuit aforesaid and southern district of New York, and within the jurisdiction of this court, heretofore, to wit, on the seventeenth day of March, in the year of our Lord one thousand eight hundred and seventy, being then and there a person employed as aforesaid,

33 did unlawfully, knowingly, wilfully, and feloniously convert to his own use the said money then and there entrusted to him, the said Norton, as aforesaid, then and there against the peace of the United States of America and their dignity, and against the form of the statute of the said United States of America in such case made and provided.

TWENTY-SECOND COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present that, at the time hereinafter mentioned, John W. Norton was a person employed in and connected with the business of the money-order offices, to wit, clerk in the money-order office at the post-office in the city of New York, in the southern district of New York; that as such clerk said Norton did receive for the use of said money-order office the sum and amount of two thousand dollars, which said money had been received for the sale of money-orders, and was then and then monies in the Treasury of the United States and belonging to said money-order office. And the jurors aforesaid, on their oath aforesaid, do further present that said John W. Norton, yeoman,

34 late of the city and county of New York, in the district and circuit aforesaid, heretofore, to wit, on the seventeenth day of March, in the year of our Lord one thousand eight hundred and seventy, at the southern district of New York, and within the jurisdiction of this court, did unlawfully, knowingly, wilfully, and feloniously convert to his own use said two thousand dollars, then and there being monies received from the sale of money-orders, and in the Treasury of the United States, and belonging to the money-order funds of the money-order office of the post-office of the city of New York, in the district aforesaid, he, the said Norton, being then and there a person employed in and connected with the business and operations of the money-order offices as aforesaid, and entrusted with said money for the use of said money-order office, then and there against the peace of the United States of America and their dignity, and against the form of the statute of the said United States of America in such case made and provided.

TWENTY-THIRD COUNT.—And the jurors aforesaid, on their

35 oath aforesaid, do further present that, at the time hereinafter mentioned, the sum and amount of four thousand dollars lawful money of the United States, and of the value of four thousand dollars, had been duly received at and transferred to the money-order office at the post-office in the city of New York; that said moneys, by reason of their receipt and transfer as aforesaid, became money-order funds and moneys in the Treasury of the United States, and at the time hereinafter mentioned, John W. Norton was a person employed in said money-order office, entrusted with said money for the use of the said money-order office. And the jurors aforesaid, on their oath aforesaid, do further present that said John W. Norton, yoeman, late of the city and county of

New York, in the circuit aforesaid, and southern district of New York, and within the jurisdiction of this court, heretofore, to wit, on the tenth day of March, in the year of our Lord one thousand eight hundred and seventy, being then and there a person employed as aforesaid, did unlawfully, knowingly, wilfully, and feloniously convert to his own use the said money then and there entrusted to him, the said Norton, as
36 aforesaid, then and there, against the peace of the United States of America and their dignity, and against the form of the statute of the United States of America in such case made and provided.

TWENTY-THIRD COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present that, at the time hereinafter mentioned John W. Norton was a person employed in and connected with the business of the money-order offices, to wit, clerk in the money-order office at the post-office in the city of New York, in the southern district of New York; that, as such clerk, said Norton did receive for the use of said money-order office the sum and amount of four thousand dollars, which said money had been received for the sale of money-orders and was then and there monies in the Treasury of the United States, and belonging to said money-order office. And the jurors aforesaid, on their oath aforesaid, do further present that said John W. Norton, yeoman, late of the city and county of New York, in the district and circuit aforesaid, heretofore, to wit, on the tenth day of March, in the
37 year of our Lord one thousand eight hundred and seventy, at the southern district of New York, and within the jurisdiction of this court, did unlawfully, knowingly, wilfully, and feloniously convert to his own use said four thousand dollars, then and there being monies received from the sale of money-orders and in the Treasury of the United States, and belonging to the money-order funds of the money-order office of the post-office of the city of New York, in the district aforesaid, he, the said Norton, being then and there a person employed in and connected with the business and operations of the money-order offices as aforesaid, and entrusted with said money for the use of said money-order office, then and there against the peace of the United States of America and their dignity, and against the form of the statute of the said United States of America in such case made and provided.

TWENTY-FOURTH COUNT.—And the jurors, on their oath aforesaid, do further present that, at the time hereinafter mentioned the sum
38 and amount of twenty thousand dollars lawful money of the United States, and of the value of twenty thousand dollars, had been duly received at and transferred to the money-order office at the post-office in the city of New York; that said moneys, by reason of their receipt and transfer as aforesaid, became money-order funds and moneys in the Treasury of the United States, and at the time hereinafter mentioned John W. Norton was a person employed in said money-order office and entrusted with said money for the use of said money-order office. And the jury aforesaid, on their oath aforesaid, do further present that the said John W. Norton, yeoman, late of the city and county of New York, in the circuit aforesaid and southern district of New York, and within the jurisdiction of this court, heretofore, to wit, on the thirtieth day of April, in the year of our Lord one thousand eight hundred and seventy, being then and there a person employed as aforesaid, did unlawfully, knowingly, wilfully & feloniously convert to his own use the said money then and there entrusted to him, the said Norton, as aforesaid, then and there against the peace of the United States
39 of America and their dignity, and against the form of the statute of the said United States of America in such case made and provided.

TWENTY-FIFTH COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present that, at the time hereinafter mentioned John W. Norton was a person employed in and connected with the business of the money-order offices, to wit, clerk in the money-order office at the post-office in the city of New York, in the southern district of New York; that, as such clerk, said Norton did receive for the use of said money-order office the sum and amount of twenty thousand dollars, which said money had been received for the sale of money-orders, and was then and there monies in the Treasury of the United States, and belonging to said money-order office. And the jurors aforesaid, on their oath aforesaid, do further present that said John W. Norton, yeoman, late of the city and county of New York, in the district and circuit aforesaid, heretofore, to wit, on the thirteenth day of April, in the year of our Lord
40 one thousand eight hundred and seventy, at the southern district of New York, and within the jurisdiction of this court, did unlawfully, knowingly, wilfully, and feloniously convert to his own use said twenty thousand dollars, then and there being monies received from the sale of money-orders and in the Treasury of the United States, and belonging to the money-order funds of the money-order office of the post-office of the city of New York, in the district aforesaid, he, the said Norton, being then and there a person employed in and connected with the business and operations of the money-order offices as aforesaid, and entrusted with said money for the use of said money-order office, then and there, against the peace of the United States of America and their dignity, and against the form of the statute of the said United States of America in such case made and provided.

TWENTY-SIXTH COUNT.—And the jurors, on their oath aforesaid, do further *re*present that, at the time hereinafter mentioned, the sum and amount of one thousand dollars lawful money of the United
41 States, and of the value of one thousand dollars, had been duly received at and transferred to the money-order office at the post-office in the city of New York; that said moneys, by reason of their receipt and transfer as aforesaid, became money-order funds and moneys in the Treasury of the United States, and at the time hereinafter mentioned John W. Norton was a person employed in said money-order office, and entrusted with said money for the use of the said money-order office. And the jury aforesaid, on their oath aforesaid, do further present that the said John W. Norton, yeoman, late of the city and county of New York, in the circuit aforesaid, and southern district of New York, and within the jurisdiction of this court, heretofore, to wit, on the nineteenth day of April, in the year of our Lord one thousand eight hundred and seventy, being then and there a person employed as aforesaid, did unlawfully, knowingly, wilfully, & feloniously convert to his own use the said money then and there entrusted to him, the said Norton, as aforesaid, then and there against the peace of the United States of America and their dignity, and against the form of the statute of the said United States of America in such case made and provided.

42 TWENTY-SEVENTH COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present that, at the time hereinafter mentioned, John W. Norton was a person employed in and connected with the business of the money-order offices, to wit, clerk in money-order office at the post-office in the city of New York, in the southern district of New York; that, as such clerk, said Norton did receive for the use of said money-order office the sum and amount of one thousand dollars, which said money had been received for the sale of money-orders, and was then and there monies in the Treasury of the United States and belonging to said money-order office.

And the jurors aforesaid, on their oath aforesaid, do further present that said John W. Norton, yeoman, late of the city and county of New York, in the district and circuit aforesaid, heretofore, to wit, on the nineteenth day of April, in the year of our Lord one thousand eight hundred and seventy, at the southern district of New York, and within the jurisdiction of this court, did unlawfully, knowingly, wilfully, and feloniously convert to his own use said one thousand dollars, then and there being
43 monies received from the sale of money-orders and in the Treasury of the United States, and belonging to the money-order funds of the money-order office of the post-office of the city of New York, in the district aforesaid, he, the said Norton, being then and there a person employed in and connected with the business and operations of the money-order offices as aforesaid, and entrusted with said money for the use of said money-order office, then and there against the peace of the United States of America and their dignity, and against the form of the statute of said United States of America in such case made and provided.

TWENTY-EIGHTH COUNT.—And the jurors, on their oath aforesaid, do further *re*present that, at the time hereinafter mentioned, the sum and amount of three thousand dollars lawful money of the United States, and of the value of three thousand dollars, had been duly received at and transferred to the money-order office at the post-office in the city of New York; that said monies, by reason of their receipt and
44 transfer as aforesaid, became money-order funds and moneys in the Treasury of the United States, and at the time hereinafter mentioned John W. Norton was a person employed in said money-order office, and entrusted with said money for the use of the said money-order office. And the jury aforesaid, on their oath aforesaid, do further present that the said John W. Norton, yeoman, late of the city and county of New York, in the circuit aforesaid, and southern district of New York, and within the jurisdiction of this court, heretofore, to wit, on the first day of April, in the year of our Lord one thousand eight hundred and seventy, being then and there a person employed as aforesaid, did unlawfully, knowingly, wilfully, & feloniously convert to his own use, the said money then and there entrusted to him, the said Norton, as aforesaid, then and there against the peace of the United States of America and their dignity, and against the form of the statute of the said United States of America in such case made and provided.

TWENTY-NINTH COUNT.—And the jurors aforesaid, on their
45 oath aforesaid, do further present that, at the time hereinafter mentioned, John W. Norton was a person employed in and connected with the business of the money-order offices, to wit, clerk in the money order office at the post-office in the city of New York, in the southern district of New York; that, as such clerk, said Norton did receive for the use of said money-order office the sum and amount of three thousand dollars, which said money had been received for the sale of money-orders, and was then and there monies in the Treasury of the United States and belonging to said money-order office. And the jurors aforesaid, on their oath aforesaid, do further present that John W. Norton, yeoman, late of the city and county of New York, in the district and circuit aforesaid, heretofore, to wit, on the first day of April, in the year of our Lord one thousand eight hundred and seventy, at the southern district of New York and within the jurisdiction of this court, did unlawfully, knowingly, wilfully, and feloniously convert to his own use said three thousand dol-
46 lars, then and there being monies received from the sale of money-

orders and in the Treasury of the United States, and belonging to the money-order funds of the money-order office of the post-office of the city of New York, in the district aforesaid, he, the said Norton, being then and there a person employed in and connected with the business and operations of the money-order offices as aforesaid, and entrusted with said money for the use of said money-order office, then and there against the peace of the United States of America and their dignity, and against the form of the statute of the said United States of America in such case made and provided.

THIRTIETH COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present that, at the time hereinafter mentioned, the sum and amount of eight thousand dollars lawful money of the United States, and of the value of eight thousand dollars, had been duly received at and transferred to the money-order office at the post-office in the city of New York; that said moneys, by reason of their
47 receipt and transfer as aforesaid, became money-order funds and moneys in the Treasury of the United States, and at the time hereinafter mentioned John W. Norton was a person employed in said money-order office, and entrusted with said money for the use of the said money-order office. And the jurors aforesaid do further present that said John W. Norton, yeoman, late of the city and county of New York, in the circuit aforesaid, and southern district of New York, and within the jurisdiction of this court, heretofore, to wit, on the first day of November, in the year of our Lord one thousand eight hundred and seventy, being then and there a person employed as aforesaid, did unlawfully, knowingly, wilfully, and feloniously convert to his own use the said money then and there entrusted to him, the said Norton, as aforesaid, then and there against the peace of the United States and their dignity, and against the form and statute of the said United States of America in such case made and provided.

48 THIRTY-FIRST COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present that, at the time hereinafter mentioned, John W. Norton was a person employed in and connected with the business of the money-order offices, to wit, clerk in the money-order office at the post-office in the city of New York, in the southern district of New York; that, as such clerk, said Norton did receive for the use of said money-order office the sum and amount of eight thousand dollars, which said money had been received for the sale of money-orders, and was then and there monies in the Treasury of the United States and belonging to said money-order office. And the jurors aforesaid, on their oath aforesaid, do further present that said John W. Norton, yeoman, late of the city and county of New York, in the district and circuit aforesaid, heretofore, to wit, on the first day of November, in the year of our Lord one thousand eight hundred and seventy, at the southern district of New York, and within the jurisdiction of this court,
49 did unlawfully, knowingly, wilfully, and feloniously convert to his own use said eight thousand dollars, then and there being monies received from the sale of money-orders, and in the Treasury of the United States and belonging to the money-order funds of the money-order office of the post-office of the city of New York, in the district aforesaid, he, the said Norton, being then and there a person employed in and connected with the business and operations of the money-order offices as aforesaid, and entrusted with said money for the use of said money-order office, then and there against the peace of the United States of America and their dignity, and against the form of the statute of the said United States of America in such case made and provided.

THIRTY-SECOND COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present that, at the time hereinafter mentioned, the sum and amount of one thousand three hundred and fifty-nine dollars and seventy-one cents lawful money of the United States, and of
50 the value of one thousand three hundred and fifty-nine dollars and seventy-one cents had been duly received at and transferred to the money-order office at the post-office in the city of New York; that said moneys, by reason of their receipt and transfer as aforesaid, became money-order funds and moneys in the Treasury of the United States, and at the time hereinafter mentioned John W. Norton was a person employed in said money-order office, and entrusted with said money for the use of the said money-order office. And the jurors aforesaid do further present that said John W. Norton, yeoman, late of the city and county of New York, in the circuit aforesaid, and southern district of New York, and within the jurisdiction of this court, heretofore, to wit, on the third day of August, in the year of our Lord one thousand eight hundred and seventy-one, being then and there a person employed as aforesaid, did unlawfully, knowingly, wilfully, and feloniously convert to his own use the said money then and there entrusted to him, the said Norton, as aforesaid, then and there against the peace of the
51 United States and their dignity, and against the form and statute of the said United States of America in such case made and provided.

THIRTY-THIRD COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present that, at the time hereinafter mentioned, John W. Norton was a person employed in and connected with the business of the money-order offices, to wit, clerk in the money-order office at the post-office in the city of New York, in the southern district of New York; that, as such clerk, said Norton did receive for the use of said money-order office the sum and amount of one thousand three hundred and fifty-nine dollars and seventy-one cents, which said money had been received for the sale of money orders, and was then and there monies in the Treasury of the United States and belonging to said money-order office. And the jurors aforesaid, on their oath aforesaid, do further present that said John W. Norton, yeoman, late of the city and
52 county of New York, in the district and circuit aforesaid, heretofore, to wit, on the third day of August, in the year of our Lord one thousand eight hundred and seventy-one, at the southern district of New York, and within the jurisdiction of this court, did unlawfully, knowingly, wilfully, and feloniously convert to his own use said one thousand three hundred and fifty-nine dollars and seventy-one cents, then and there being monies received from the sale of money-orders and in the Treasury of the United States, and belonging to the money-order funds of the money-order office of the post-office of the city of New York, in the district aforesaid, he, the said Norton, being then and there a person employed in and connected with the business and operations of the money-order offices as aforesaid, and entrusted with said money for the use of said money-order office, then and their against the peace of the United States of America and their dignity, and against the form of the statute of the said United States of America in such case made and provided.

53 THIRTY-FOURTH COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present that, at the time hereinafter mentioned, the sum and amount of three thousand dollars lawful money of the United States, and of the value of three thousand dollars, had been duly received at and transferred to the money-order office at the

post-office in the city of New York; that said moneys, by reason of their receipt and transfer as aforesaid, became money-order funds and moneys in the Treasury of the United States, and at the time hereinafter mentioned John W. Norton was a person employed in said money-order office, and entrusted with said money for the use of the said money-order office. And the jurors aforesaid do further present that said John W. Norton, yeoman, late of the city and county of New York, in the circuit aforesaid, and southern district of New York, and within the jurisdiction of this court, heretofore, to wit, on the twenty-sixth day of October, in the year of our Lord one thousand eight hundred and
54 being then and there a person employed as aforesaid, did unlawfully, knowingly, wilfully, and feloniously convert to his own use the said money then and there entrusted to him, the said Norton, as aforesaid, then and there against the peace of the United States and their dignity, and against the form and statute of the said United States of America in such case made and provided.

THIRTY-FIFTH COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present that, at the time hereinafter mentioned, John W. Norton was a person employed in and connected with the business of the money-order offices, to wit, clerk in the money-order office at the post-office in the city of New York, in the southern district of New York; that, as such clerk, said Norton did receive for the use of said money-order office the sum and amount of three thousand dollars, which said money had been received for the sale of money-orders, and was then and there monies in the Treasury of the United States and be-
55 longing to said money-order office. And the jurors aforesaid, on their oath aforesaid, do further present, that said John W. Norton, yeoman, late of the city and county of New York, in the district and circuit aforesaid, heretofore, to wit, on the twenty-sixth day of October, in the year of our Lord one thousand eight hundred and seventy, at the southern district of New York, and within the jurisdiction of this court, did unlawfully, knowingly, wilfully, and feloniously convert to his own use said three thousand dollars, then and there being monies received from the sale of money-orders and in the Treasury of the United States and belonging to the money-order funds of the money-order office of the post-office of the city of New York, in the district aforesaid, he, the said Norton, being then and there a person employed in and connected with the business and operations of the money-order offices as aforesaid, and entrusted with said money for the use of said money-order office, then and there against the peace of the United States
56 of America and their dignity, and against the form of the statute of the said United States of America in such case made and provided.

THIRTY-SIXTH COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present, that at the time hereinafter mentioned the sum and amount of eleven thousand dollars lawful money of the United States, and of the value of eleven thousand dollars, had been duly received at and transferred to the money-order office at the post office in the city of New York; that said moneys, by reason of their receipt and transfer as aforesaid, became money-order funds and moneys in the Treasury of the United States, and at the time hereinafter mentioned John W. Norton was a person employed in said money-order office, and entrusted with said money for the use of the said money-order office. And the jurors aforesaid, on their oath aforesaid, do further present, that said John W. Norton, yeoman, late of the city and county of New York, in the circuit aforesaid, and southern district of New York,

57 and within the jurisdiction of this court, heretofore, to wit, on on the third day of August, in the year of our Lord one thousand eight hundred and seventy one, being then and there a person employed as aforesaid, did unlawfully, knowingly, wilfully, and feloniously convert to his own use the said money then and there entrusted to him, the said Norton, as aforesaid, then and there against the peace of the United States of America and their dignity, and against the form of the statute of the said United States of America in such case made and provided.

THIRTY-SEVENTH COUNT.—And the jurors aforesaid, on their oath aforesaid, do further present, that at the time hereinafter mentioned John W. Norton was a person employed in and connected with the business of the money-order offices, to wit, clerk in the money-order office at the post-office in the city of New York, in the southern district of New York; that, as such clerk, said Norton did receive for the use of said money-order office the sum and amount of eleven thou-
58 sand dollars, which said money had been received for the sale of money-orders, and was then and there monies in the Treasury of the United States and belonging to said money-order office. And the jurors aforesaid, on their oath aforesaid, do further present, that said John W. Norton, yeoman, late of the city and county of New York, in the district and circuit aforesaid, heretofore, to wit, on the third day of August, in the year of our Lord one thousand eight hundred and seventy-one, at the southern district of New York, and within jurisdiction of this court, did unlawfully, knowingly, wilfully, and feloniously convert to his own use said eleven thousand dollars, then and there being monies in the Treasury of the United States, and belonging to the money-order funds of the money-order office of the post-office of the city of New York, in the district aforesaid, he, the said Norton, being then and there a person employed in and connected with the business and operations of the money-order offices as aforesaid, and entrusted with said money for the use of said money-order office, then and
59 there against the peace of the United States of America and their dignity, and against the form of the statute of the said United States of America in such case made and provided.

GEO. BLISS,
U. S. Atty.

(Endorsed:) U. S. circuit court. The United States of America vs. John W. Norton. Indictment. Conversion of money-order funds in post-office. George Bliss, U. S. district attorney. A true bill. Lewis C. Popham, foreman. Filed Feb'y 21st, 1874.

60 U. S. circuit court for the southern district of New York.

THE UNITED STATES
versus
JOHN W. NORTON.

In the matter of the indictment against John W. Norton for embezzlement, &c., &c.

Special plea.

And the said John W. Norton, in his own proper person, cometh into court here, and having heard the said indictment read, says that the

United States of America ought not further to prosecute the said indictment against him, the said John W. Norton; because, he says, that he is not a person who has fled from justice, and that the several acts alleged to constitute the several offences in said indictment charged did not, if at all, arise, exist, or accrue within two years next last before the finding of said indictment, to wit:

The said indictment avers the commission of said several acts
61 or offences on various days from the first day of August, 1871, and subsequently to the twenty-fifth day of October, 1800, to wit, on the first day of August, 1871; the thirty first day of March, 1870; the first day of August, 1871; the third day of August, 1871; the eleventh day of August, 1869; the twentieth day of September, 1869; the twentieth day of September, 1869; the twenty-eighth day of September, 1869; the twenty-eighth day of September, 1869; the twenty-second day of January, 1870; the twenty-second day of January, 1870; the second day of March, 1870; the second day of March, 1870; the seventh day of February, 1870; the seventh day of February, 1870; the twenty-seventh day of January, 1870; the twenty-seventh day of January, 1870; the thirty-first day of March, 1870, the twenty-first day of March, 1870; the seventeenth day of March, 1870; the seventeenth day of March, 1870; the tenth day of March, 1870; the thirtieth day of April, 1870; the thirtieth day of April, 1870; the nineteenth day of April, 1870; the nineteenth day of April, 1870; the first day of April, 1870; the first day of November, 1870; the first day of November, 1870; the third day of August, 1871; the third day of Au-
62 gust, 1871; the *the* twenty-sixth day of October, 1800; the twenty-sixth day of October, 1870; the third day of August, 1871; the third day of August, 1871. And that said indictment was not found, presented, or filed until February, 21, 1874; and this, he, the said John W. Norton, is ready to verify.

Wherefore he prays judgment, and that by this honorable court here he may be dismissed and discharged from the said premises in the said indictment specified and alleged.

JOHN W. NORTON.

(Endorsed:) U. S. circuit court. The United States of America agst. John W. Norton. Special plea. Abram Wakeman, of counsel for the deft. Filed June 25, '74.

63 Circuit court of the United States for the southern district of New York.

THE UNITED STATES
versus.
JOHN W. NORTON.

And George Bliss, United States district attorney for the southern district of New York, who prosecutes for the said United States in this behalf, as to the said plea of the said John W. Norton by him above pleaded, says that the same and the matters there contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude the said United States from prosecuting the said indictment against him, the said John W. Norton, and that the said United States are not bound by the law of the land to answer the same; and this he, the said George Bliss, who prosecutes as aforesaid, is ready to verify; wherefore, for want of a sufficient plea in this behalf,

he the said George Bliss, for the said United States, prays judgment, and that the said John W. Norton may be required to further plead.

64 Dated New York, June 27, 1874.

GEORGE BLISS,
U. S. Attorney.

(Endorsed:) U. S. circuit court. The U. S. vs. John W. Norton. Demurrer to plea. George Bliss, U. S. atty. Filed June 27, '74.

65 Circuit court of the United States for the southern district of New York.

THE UNITED STATES
agst.
JNO. W. NORTON.

And the said John W. Norton says that his said plea by him above pleaded and the matter therein contained, in manner and form as the same are above pleaded and set forth, are sufficient in law to bar and preclude the said United States from prosecuting the said indictment against him, the said John W. Norton; and the said John W. Norton is ready to verify and prove the same, as the said court here shall direct and award; wherefore, inasmuch as the said George Bliss, for the said United States, hath not answered the said plea, nor hitherto in any manner denied the same, the said John W. Norton prays judgment, and that by the court here he may be dismissed and discharged from the said premises in the said indictment specified.

WAKEMAN & LATTING,
Attys. for John W. Norton, 93 Nassau st., N. Y.

Dated New York, March 19th, 1875.

66 (Endorsed:) U. S. circuit court, southern dist. of N. Y. The United States agst. John W. Norton. Joinder to demurrer. Wakeman & Latting, attys. for John W. Norton, 93 Nassau st., N. Y. Filed July 5, 1874.

67 At a stated term of the circuit court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York, on the fifteenth day of March, in the year of our Lord one thousand eight hundred and seventy-five.

Present, the honorable Lewis B. Woodruff, circuit judge, and the honorable Charles L. Benedict, district judge.

THE UNITED STATES OF AMERICA
against
JOHN W. NORTON. } Certificate of division.

And now, upon filing the special plea of the defendant and the demurrer thereto of the district attorney for the United States, and the joinder of the defendant, the court proceed to hear arguments thereon, upon which hearing the following question occurred, to wit:

68 Whether this indictment of the defendant for embezzling money, brought under the provisions of the 11th section of the act of

Congress approved May 17th, 1864, entitled "An act to establish a postal money-order system," and which was found more than two years from the time of committing the offence therein charged, but within five years after committing said offence, is an indictment for an offence within the description of offences for which under the limitation provided in the thirty-second section of the act of Congress approved April 30th, 1790, entitled "An act for the punishment of certain crimes against the United States," the defendant cannot be prosecuted, tried, or punished unless the indictment shall have been found within two years from the time of committing the offence, or is an indictment for a crime arising under the revenue laws within the true intent and meaning of the 3rd section of the act of Congress approved March 26th, 1804, entitled "An act in addition to the act entitled 'An act for the punishment of certain crimes against the United States.'"

69 On which question the opinions of the judges were opposed.

Whereupon, upon the request of the district attorney and of the counsel for the defendant, that the points on which the disagreements has happened may, during the said term, be stated, under the direction of the judges, and certified under the seal of the court to the Supreme Court of the United States to be finally decided:

It is ordered that the said point of disagreement, together with the indictment, plea, demurrer, and joinder, be, and they hereby are, certified according to the request of the district attorney and of the counsel for the defendant as aforesaid and of the act of Congress in that case made and provided.

L. B. WOODRUFF,
Circuit Judge.
CHAS. L. BENEDICT,
District Judge.

(Endorsed:) U. S. C. C. United States vs. John W. Norton. Certificate of division. Filed Mch. 17, 1875.

70 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to sixty-nine, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of The United States of America against John W. Norton, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 24th day of March, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the said United States the ninety-ninth.

KENNETH G. WHITE, *Clerk.*

(Indorsement on cover:) No. 513. The United States, plaintiffs, vs. John W. Norton. S. New York, C. C. U. S. Filed 3 April, 1875.

O

In the Supreme Court of the United States.

OCTOBER TERM, 1875.

THE UNITED STATES, PLAINTIFFS,
vs.
JOHN W. NORTON.
} No. 513.

ON CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

Brief for the United States.

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ON CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

Indictment under the act of May 17, 1864, c. 87, § 11, (13 Stats., 78,) setting forth in thirty-seven counts the embezzlement by the respondent, a clerk in the money-order department of the post-office in New York City, of large amounts of the money-order funds of that office, at various dates, the latest of which is the 3d day of August, 1871. The indictment was found and filed February 21, 1874. The defendant pleaded that "the several offenses did not arise, exist, or accrue within two years next last before the finding of said indictment." To this plea the district attorney demurred. After joinder, and upon argument thereon, "the following

question occurred, to wit: Whether this indictment of the defendant for embezzling money," brought under the act and section aforesaid, "and which was found more than two years from the time of committing the offence therein charged, but within five years after committing the offence, is an indictment for an offence within the description of offences for which, under the limitation provided in the thirty-second section of the act of Congress approved April 30, 1790, entitled 'An act for the punishment of certain crimes against the United States,' the defendant cannot be prosecuted, tried, or punished, unless the indictment is found within two years from the time of committing the offence, or is a crime arising under the revenue laws within the true intent and meaning of the third section of the act approved March 26, 1804, amendatory of the aforesaid act of April 30, 1790. On which question the judges were opposed in opinion. (Record, 19, 20.)

The act of May 17, 1864, (c. 87, § 11, 13 Stats., 78,) under which the defendant is indicted, declares it a felony for any person employed in or connected with the business of money-order offices to use or convert to his own use, temporarily even, any of the funds of those offices. The plea is that the offence was committed more than two years before the indictment was found; and that the prosecution is, therefore, barred by the act of April 30, 1790, (c. 9, § 32, 1 Stats., 119,) limiting it (as to offences not capital) to two years. This plea would, doubtless, present a bar, but for the act of March 26, 1804, (c. 40, § 3, 2 Stats., 290,) which provides that any person guilty of any crime arising under the revenue laws of the United States may be prosecuted at any

time within five years after committing the offence. The inquiry is thus narrowed down to this: Is the offence, here charged, a crime arising under the revenue laws of the United States?

ARGUMENT.

"Revenue: The income of a nation, derived from its duties, taxes, or other sources, for the payment of the national expenses." (Webst. Dict.)

The funds which Norton is charged with embezzling were brought into the money-order office, in which he was employed, in the various modes indicated in the act of May 17, 1864, (c. 87, § 11,) from the sale of money-orders, *including all fees received for selling the same*, from moneys transferred from the funds of the Post-Office Department, and from other post-offices, to the money-order department of the New York post-office. This act, creating the money-order system, is clearly a revenue law, within the meaning of the limitation act of 1804, as this court has decided in United States *v.* Bromley, 12 Howard, 97. The re-enactment of this clause in the Revised Statutes after this decision is a legislative recognition of the correctness of the construction. (R. S., § 1046.)

Under the Constitution, (Art. 1, § 8,) Congress has power "to establish post-offices and post-roads," and to make all laws necessary for carrying that power into execution. This did not imply that these establishments need be self-supporting. They are not entirely so; and it would be absurd to say that they can be partially supported from other sources and could not constitutionally be wholly so sustained. They might be maintained by direct taxation, or by diverting to their sup-

port sufficient appropriations of the customs or other revenues of the Government. But the postage charged upon mail-matter is a means of raising a revenue, now used to pay postal expenses. It is a method of levying a tax upon individuals to aid in accomplishing a national duty under the Constitution. The stamp placed upon an envelope covering a letter or newspaper, is a revenue-stamp just as much as that placed upon a deed, check, or order. The fact that the revenue in one case is applied to defray a different kind of expense from the other—or rather one particular expense instead of general expenses—makes no difference, since both are used for essentially governmental purposes. It is noticeable, however, that when these acts of 1790 and of 1804 were passed, the postal revenues exceeded the expenditures, and thus a balance applicable and applied to the general expenses of the Government was obtained. To save laborious research through the various official reports establishing this fact, reference may be had to vol. xiii of the edition of the American Cyclopedia now in course of publication, title, "POSTS," page 754. Eighteen hundred and forty is the first year in which the expenses exceeded the receipts, and it is only within the last ten years that the deficit has become a large one. In 1865, the receipts exceeded the expenditures $861,430, the balance the other way being but little more than that the following year. In its first institution, the post-office receipts were about one-tenth of those from customs. At the top of page 750 of the same volume, (Am. Enc.,) will be found this statement as to the English post-office: "The post-office is a source of considerable *revenue* to the government. The average net *revenue*" is then stated, with a table of the "total postal *revenue*" and "*net revenue*" for the

decade from 1864 to 1874, and it then continues: "The *revenue* from letters, post-cards, newspapers, and books, during this period has increased from £3,957,047, in 1864, to £5,134,816, in 1873, and that from *money-order commissions* from £151,979 to £208,057. Upon page 755 of the same volume is a tabular statement relative to our Post-Office Department, giving "the *revenue* from all sources for three years." It there appears that the "*revenue from money-orders*" in 1872, was $443,397; in 1873, only $68,584, and in 1874, it was $105,198. By the report of the Postmaster-General for 1872, it appears that the *excess* of receipts over expenditures in this money-order business, for the fiscal year ending June 30, 1872, was $105,977.77; and he states that "the above excess, and also the further sum of $337,419.86, being the total *profits* which have accrued from the operations of the money-order system from Nov. 1, 1864, to June 30, 1872, have been duly placed to the credit of the Treasurer of the United States, for the service of the Post-Office Department," conformably to the act of June 8, 1872, (c. 335, § 42,) which specially requires it to be so deposited and that it shall be entered "in the accounts of said Department under the head of '*revenue* from money-order business.'" (17 Stats. at Large, 290.) In that report, the Postmaster-General goes on to show that the fact of there being any deficiency in his Department arises entirely from the franking-privilege. Waiving all discussion about the propriety of the exemption thus bestowed, it is evident that its exercise can be justified only upon the ground of the general good; and it results that the transmission of mail-matter is not now the source of a *surplus* revenue above its own needs that it was in the early days of the republic, only because a

higher public advantage is supposed to be obtained from carrying a very considerable portion of such matter free of charge.

Without further examination of documents or detail of facts and figures—since the later dates do not concern us—these positions are assumed, which (we think) are material and incontrovertible, viz, that the laws imposing postages were first enacted to raise a revenue to aid the Government in the performance of duties devolved upon it by the Constitution; that when these statutes of 1790 and 1804 were passed, and always prior thereto and for many years thereafter, the receipts from postages so far exceeded the expenses as to afford a substantial addition to the revenue devoted to the general uses and necessities of the Government; that from its inception in 1864, by the act of May 17, up to the reduction of the rates by the act of June 8, 1872—during the whole time in which the defendant's defalcations are alleged to have occurred—the money-order system was *in fact* a source of income, or *revenue*, to the United States in excess of the expenditure it involved; and that, not merely in common parlance but in official reports, public documents, and congressional enactments, the receipts of the Post-Office Department, and especially those from this particular source, were treated and written and spoken of as "*revenues*" accruing to the United States.

If I tax the patience of the court by this elaboration it is not because the proposition is not plain to me, but my excuse is that the learned district judge did not agree with the circuit judge as to the applicability of this act of 1804; therefore, knowing the cause to have been ably presented to him without convincing him, I am induced to add to these suggestions made to him such of law and

fact as occur to me as throwing further light upon the subject. I understand that he thought the case of United States *v.* Cook, (17 Wallace, 168,) militated against and overruled upon this point that of United States *v.* Bromley, (12 Howard, 96;) though how such an impression can be derived from a comparison of the cases I can *not* understand. In United States *v.* Bromley, (12 Howard, 97,) this court, *per* McLean, J., said: "Revenue is the income of a State; and the revenue of the Post-Office Department, being raised by a tax upon mailable matter conveyed in the mail, and which is disbursed in the public service, is as much a part of the income of the Government as moneys collected for duties on imports."

The discussion in the opinion in United States *v.* Cook, (17 Wallace, 168,) is confined almost entirely to a question of pleading; the other point was submitted without argument by the United States, but its facts differentiate it *toto cœlo* from United States *v.* Bromley. Cook was a paymaster; in that capacity he received funds only from the Treasury, collecting no revenues to be paid into it; the embezzlement by him did not diminish the *revenues* but the *resources* of the United States. A statement of the revenues received by the Treasurer of the United States for that fiscal year would not have been lessened in amount by Cook's peculation, but so much of its available means were abstracted. The moneys in Cook's hands might have been entirely (and, so far as any funds once in the Treasury can be subsequently attributed to any source, probably were largely) derived from *loans*, which are in no just sense revenue. If a bank or railroad passes a dividend, the stockholder's income is proportionally diminished; but if, after his divi-

dend is declared and drawn, (and even mingled indistinguishably with his bank-deposit or other cash,) somebody steals a like amount from his pocket, it is his property, and not his income, that is thereby affected.

If a man has a note discounted at a bank, and its amount placed to his credit there, and subsequently deposits upon the same account dividends received by him, drawing against the account as business may require, and then the cashier embezzles part of the funds of the institution, it would be absurd to say he had stolen the depositor's income. Yet this is precisely Cook's case. The United States borrowed largely; received customs, taxes, sold land, &c., &c., and put all these funds into the Treasury, then sent Cook out with some of it to pay off the soldiers, and he stole it. He took the *property*, and not the *revenues*, of the Government. Bromley indirectly deprived the Government of revenue by doing for his own profit what the United States claimed and had the right to do for its profit; and what would have been done by the United States but for him. Therefore he deprived it of receipts or revenues, violating a law passed to insure the reception of these receipts; to protect these revenues. Norton's case is stronger still. The funds he stole were collected as revenues from the citizens of New York and never were turned into the Treasury. He collected the tax *virtute officii*, and then, while he held the proceeds in his hands as a revenue officer, he embezzled them.

Judge McLean, in United States *v.* Bromley, calls attention to the title of the act of March 3, 1845, "for the prevention of frauds on the *revenue* of the Post-Office Department," under which that prosecution was instituted. Similar expressions are found in such enactments from

the early sessions of Congress to the present time. See act of February 20, 1792, permanently establishing the Department, c. 7, § 3, (1 Stats., 234;) Acts of 1794, c. 23, §§ 3 and 4, (1 Stats., 357;) Acts of 1799, c. 43, § 1, (1 Stats., 733;) Act of 1810, c. 37, § 1, (2 Stats., 593.) During the war with England a law was passed, Acts of 1814, c. 16, (3 Stats., 159,) "to provide additional revenues for defraying the expenses of Government, * * * and for increasing the rates of postage," to which were added by § 2, "a sum equal to fifty per centum upon the amount of such rates respectively, *for the use of the United States.*" Repealed February 1, 1816, c. 7, (3 Stats., 252;) Acts of 1825, c. 64, § 1, (4 Stats., 102.) In 1836, by act of July 2, c. 270, the organization of the post-office establishment was remodeled. The first section declared "That the *revenues* arising in the Post-Office Department, and all debts due the same, shall, when collected, *be paid*, under the direction of the Postmaster-General, *into the Treasury* of the United States." (5 Stats., 80.) See also § 3, same page. In short, the income from postage has uniformly been treated and spoken of, legislatively and otherwise, as "*revenue*," or "postal revenue." See act of June 8, 1872, §§ 42–46, 54, (17 Stats., 290–'2,) R. S., §§ 4049–4059.

The courts have considered the word "revenue" as used in this act of 1804 as applicable to revenue from all sources, and not confined to those from customs. United States *v.* Bromley, (12 Howard, 97.) In United States *v.* Wright, (11 Int. Rev. Record, 35, 36, and 3 Am. Law Times, 17,) which was an indictment for carrying on distilling without compliance with the provisions of the internal-revenue laws, the court, after hearing "elaborate argument," declared it failed to convince them that this

act of 1804 ought to be restricted to customs duties, saying, "Its fundamental infirmity is confounding the instrumentality with the result. Taxation is the means by which revenue is raised, and revenue is therefore the product or fruit of taxation. *It matters not in what form the power of taxation may be exercised, or to what subjects it may be applied, its exercise is intended to provide means for the support of the Government, and the means so provided are necessarily to be regarded as the national revenue,*" citing United States *v.* Shorey, (9 Int. Rev. Rec., 202, where Clifford, J., held smuggling to be within this statute and that counterfeiting was not; very properly, because counterfeiting does not defraud the Government, but the citizen who receives the counterfeited coin or bill. In United States *v.* Dustin, (15 Int. Rev. Rec., 30,) Emmons, J., says, "No plausible reason is perceived for saying that the word 'revenue' in this and other laws, where it is used broadly and generally, does not include internal revenue as well as customs laws. The only matter of surprise is that it should ever have been necessary for the court to decide it." * * * "It might be shown, from a consideration of all the legislation upon this subject, that to divide arbitrarily the law into two classes, and decide that all provisions in reference to revenue laws meant customs laws only, would result in most absurd consequences." Even Mr. Justice Benedict himself, in Stevens *v.* Mack, (5 Blatchf., 515,) remarks, "The general term 'revenue laws of the United States' used in the act of March 2, 1833, undoubtedly might, if standing alone, include *all revenue laws of every description;* but used as they are [in an act 'to provide for the collection of duties on imports'] they must be considered as not

intended to include laws for the collection of internal duties."

No *reason* is apparent for the discrimination sought to be made here by the respondent. There is a plain one why prosecutions for counterfeiting and such offenses as are naturally likely to be discovered and punished within two years, if the offender does not flee from justice, should be limited to that period; and the means of ascertaining within that time whether or not the specific sum placed by the *Government* in the hands of a paymaster for a designated use has been applied to or diverted from that purpose must exist; but it is equally impracticable speedily to ascertain whether or not a postmaster or a customs-officer has received from *citizens* sums which he ought to turn over to the Treasury, but which he withholds, and of which, perhaps, he makes no account.

When the Government inaugurated the money-order system in 1864, it not only desired to extend additional facilities of communication to the people, but also to increase its own revenues by engaging in and securing the profits of a portion of the business of banking by a transfer of credits. Therefore, by § 814 of the postal regulations, postmasters are instructed to "use a legitimate influence in recommending the money-order system," &c. This business needs the protection of the act of 1804. It comes within its letter and spirit. Hence, it is applicable. Penal laws must not be so strictly construed "as to narrow the words of the statute to the exclusion of *cases* which those words in their ordinary acceptation, or in that sense in which the legislature has obviously used them, would comprehend." United States *v.* Wiltberger, 5 Wheaton, 95. "When the words

are general and include *various classes of persons*, there is no authority which would justify a court in restricting them to *one* class and excluding others where the *purpose* of the statute is alike applicable to all." United States *v.* Hartwell, 6 Wallace, 396.

EDWIN B. SMITH,
Assistant Attorney-General.

EVENING POST STEAM PRESSES, 208 Broadway, cor. Fulton St., N. Y.

Supreme Court,

OF THE UNITED STATES.

THE UNITED STATES,
Plaintiffs,

vs.

JOHN W. NORTON
Defendant.

October Term, 1875.
No 513. Arising on a certificate of division of opinion in the Circuit Court of the U. S. for the Southern District of New York.

Brief for the defendant.

Case.

On the 17th of May 1864, Congress passed an act (13 Stat at large 76). entitled "An Act to establish a postal money order system."

The first section declares "that to promote public convenience and to insure greater security in the transfer of money through the U. S. Mails the Postmaster General is hereby authorized to establish under such rules as he may find expedient and necessary, a uniform money order system at all post offices which he

may deem suitable therefor," &c. It then provides that orders for money may be issued by the deputy-postmaster, at every money-order office payable by the deputy postmaster at any other money-order office, the applicant to deposit the amount of the order and the fees.

Section 3 provides that applicants shall pay a fee of ten cents for one order from one dollar up to ten dollars &c.

Section 7. provides that deputy postmasters at money-order offices may be allowed by the post-master general, not exceeding one-third of the whole amount of fees and one-eighth of one per cent. on the gross amount of orders paid at their respective offices.

Sec. II. Provides "That all moneys received for the sale of money orders, including all fees for selling the same, all moneys transferred from the funds of the Post Office Department to the money-order offices, all moneys transferred or paid from the money-order offices to the use and service of the Post Office Department, and all transfers of funds from one postmaster to another for the use of the money-order offices, shall be deemed and taken to be the moneys in the treasury of the United States, and if any postmaster, assistant, clerk or other person employed in or connected with the business or operations of the money order offices, shall convert to his own use, in any way whatever, or shall use by way of investment in any kind of property or merchandise, or shall loan, with or without interest, or shall deposit in any bank, or shall exchange for other funds, *any portion of such moneys*, every such act shall be deemed and adjudged to be an embezzlement of so much of said moneys as shall be thus taken, converted, used, loaned, deposited or exchanged, which is hereby declared to be a felony." It is for a violation of this last section that this indictment is found. It is composed of thirty-seven counts, and the offence is charged to have been committed on various days between the

first day of August, 1869, and the 4th day of August, 1871.

The indictment was not found until February 21, 1874, more than two years and six months after the alleged commission of the offence.

By § 32 of the Act of April 30, 1790, entitled "An Act for the punishment of certain crimes against the United States, it is provided, "No person shall be prosecuted, "tried or punished for any offence not capital, nor "for any fine or forfeiture under any penal statutes, "unless the indictment or information for the same "shall be found or instituted within two years from the "time of committing the offence or incurring the fine or "forfeiture aforesaid."

By § 3 of the Act of March 26, 1804, entitled "An "Act in addition to the Act entitled an Act for the "punishment of certain crimes against the United "States," (2 Stat. at large 290) it is provided:—

"That any person or persons guilty of any *crime* "*arising under the revenue laws* of the United States, "*or incurring any fine or forfiture by breaches* of the said "Laws, may be prosecuted, tried and punished, pro- "vided the indictment or information be found at any "time within five years after committing the offence "or incurring the fine or forfeiture, any law or provis- "ion to the contrary nothwistanding."

Article *one*, § 7, of the Constitution of the United States, provides that: "All bills for raising revenue shall originate in the House of Representatives."

The Question.

Under this statement the question is presented—Is the embezzlement of money-order funds *being moneys*

in the Treasury of the United States, under § 11 of the postal money order act, a crime *arising under "the* Revenue laws of the United States," within the intent and meaning of the 3d section of the act of 1804.

We affirm with great confidence that it is not.

Argument.

I.—This seems entirely clear from the provisions of the section under which the alleged offences arise.

Sec. 11. enumerates the sources from which all money order funds for the use of money-order offices are to be derived, and then specifically declares that these moneys "shall be deemed and taken to be "the moneys in the Treasury of the United States." The defendant is charged in each one of the thirty-seven counts of the indictment with having embezzled portions of these funds, there and then being moneys in the Treasury of the United States.

Now, we submit with great respect, that the embezzlement of moneys already in the Treasury is not a crime arising under "*The* Revenue Laws."

U. S. *v.* Cook, 17 Wallace, 168.

II.—That the Statute entitled "An Act to Establish a Postal Money Order System" is not one of "THE Revenue laws within the Act of 1804, we believe to be entirely clear from its provisions.

1. The title, although no part of the statute, indicates the intent of the legislature in passing it. It is the name given to it by its authors. Knowing the object of its passage they characterised it as "An Act to Establish a Postal Money Order System"—nothing more.

In this view the idea of revenue is negatived by its very designation. In the U. S. *vs.* Palmer 3, Wheaton 610, Chief-Justice Marshall resorted to the title of a statute for a like purpose, and so in the U. S. *vs.* Bromly 12, Howard—hereinafter referred to.

2. By the very first sentence of the statute it is declared "that to promote public convenience and to insure greater security in the transfer of Money through the U. S. Mails the Postmaster-General is hereby authorized to establish a uniform money-order system."

   This excludes the idea that revenue was the object of this law.

3. Again, that revenue was not the object of this statute, is clear from section seven, which prescribes the compensation to postmasters at money-order offices, and also from the fact that by the last section of the act $100,000 was appropriated to cover any deficiencies which might arise.

III.—That Revenue was not the object of the Post Office Department in recommending the establishment of this system is a recorded fact.

Judge Blair as postmaster general in his annual report for 1864, after giving certain statistics in regard to the number of dead letters and their contents, says: "In this connection, I beg leave to renew the recommendation made in my last annual report, that a postal money order system be established to facilitate the transmission of

small sums of money through the mails, which I am confident will not only prove a great convenience to civilians and soldiers, but would almost entirely obviate the loss of money-letters, the great majority of which inclose small remittances."

IV.—That the phrase "the revenue laws" as used in the Act of 1804, meant only such laws as were passed for the direct and avowed purpose of raising revenue seems evident; hence, they are designated as "THE *revenue laws*."

The United States *v.* Mayo.
1 Gallison, p. 396-397.

This case arose in the New Hampshire Circuit, under the Embargo law of 1808. It was an action in debt for a penalty, and the defendant pleaded the two years limitation under the Act of 1790, to which plea a demurrer was interposed and the question was, whether the Embargo Act of the 9th of January 1808 was a revenue law within the Act of 1804.

Mr. Justice Story held that it was not, that the true meaning of "The revenue laws" in this clause is such laws as are made for the direct and avowed purpose of creating and securing revenue or public funds for the service of the Government.

"No laws (says he) whose collateral and indirect operation might possibly conduce to the public or fiscal wealth are within the scope of this provision. The argument on this head utterly fails."

The case of Parsons *vs.* Hunter, 2d Sumner, 419,

is also in point. This case arose under the Consular Act of 1803 to recover a penalty of five hundred dollars for not depositing the ship's register with the consul on arrival in a foreigns port.

The case turned upon the question whether the Consular Act was a revenue law under the 3d Section of the Act of 1804. If not, then it came within the provisions of the Act of 1790, which provides the limitation of two years.

In deciding the point, Mr. Justice Story says, "It appears to me that the Act (the Consular Act) on which the present information is founded is in no just sense a revenue law;" and on this ground reversed the judgment.

V.—Article *one*, § 7 of the Constitution of the U. S. provides that "all bills for raising revenue shall originate in the House of Representatives," &c.

In the Commentaries on the Constitution, § 880, 4th Ed., the same learned judge says, in referring to this provision, that "Learned commentators suppose that every bill which indirectly or consequentially may raise revenue is within the sense of the Constitution a Revenue Bill." But the practical construction has been against this opinion, and indeed, the history of the origin of the power already suggested abundantly proves that it has been confined to bills to levy taxes in the strict sense of the words, and has not been understood to extend to bills for other purposes which may incidentally raise revenue."

That this construction is a correct one is clear

from the discussions in regard to this clause in the convention. See Elliott's Debates, vol. 1, p. 174, and *passim*.

The practice of the two Houses of Congress under this clause has uniformly been in accord with these views.

The great debate between the two Houses in 1871, upon the bill originated and passed in the Senate, to repeal so much of the Act of July 14, 1870, as continued the income tax, is clear proof of this fact.

By the Senate it was insisted that this article "meant only bills, the direct purpose of which "was to *raise* revenue by the levy of taxes im- "posts, duties or excises." But the House claimed that it conferred upon it the exclusive right to "originate all bills relating directly to taxation," or, as expressed in the unanimous report adopted by the House, "*directly affecting* the revenue."

See Reports of committees H. R. 3d session 41st Congress, No. 42.

Under this constitutional restriction various bills for the avowed purpose of raising the revenue originated in the House of Representatives, and became laws; and that it is clear that Congress, when they passed the Act of 1804, and used the phrase, "the Revenue Laws of the United States," meant those laws which had their exclusive origin in the House, and the direct and avowed object of which was to raise or regulate the Revenue.

VI. Apply plain common sense to the question and we have no difficulty—using the words in their ordinary and familiar signification—what is meant by "the Revenue Laws?" Why, simply "laws to raise Revenue." Or more elaborated "laws,

the object of which is to make and regulate the revenue."

And that should be so far the "object" as naturally to cause the mind to characterise or name it. *E. g.*, the law for the discharge of insolvent debtors yields a revenue, but that is an incident. The object of the law was as stated, and hence it is called a Bankrupt law. So in relation to the law for the protection and encouragement of inventors; although incidentally yielding revenue, no one ever thought of claiming it to be one of the Revenue laws.

The same is true of the Copyright law, the Steam Boiler Inspection law, the law for the admeasurement of the tonage of vessels, &c., &c., &c The bills for establishing the post office, the mint, and regulating foreign coin, originated in the Senate, and of course, were not then regarded as part of the Revenue Laws.

Story on the Const., Vol. 1, § 880,
4th Edition.

VII. The classification of the laws, &c., by intelligent compilers, shows the sense of the profession on this point. No where do we find the postal laws classed as part of "the Revenue Laws," much less the postal money-order law. Mr. Abbott, in his digest, under the head of Revenue, places Duties, Income Tax, Internal Revenue, Public Debt, Taxes.

Mr. Heyl, in his valuable digest of "the Revenue Laws, compiled under the instruction of the Treasury department, and to which, for a long period, the author has been attached, finds no place for the act to establish a postal money-order system. See his treatise compiled and published in 1870.

VIII.—The case of the United States *vs.* Bromly, 12 Howard, is relied upon by the Government.

This case arose under the 10th section of the Act of March 3d, 1875 (5 Stat. at Large, 746).

The Act is entitled "An Act to reduce the rates of "postage ~~the~~ limit the use and correct the abuse "of the franking privilege, and for the prevention of "frauds *on the revenue of the Post Office Department.*"

It was an action of debt to recover $50 penalty from captain Bromly of the packet-boat *Empire* for carrying letters on his boat between Albion and Rochester, outside the mails, over an established mail route. Thus directly affecting the revenue of the department derived from that post route.

The United States having been defeated in the District and Circuit Courts the cause was removed by writ of error into the Supreme Court. That court held under the Act of May 31, 1844, wherein it is provided, that final judgments in any Circuit Court of the United States in any civil action brought by the United States for the enforcement of the revenue laws of the United States or for the collection of duties due, &c., may be reexamined, &c., in the Supreme Court of the United States, without regard to the amount involved in the action; that the Act of March 3d, 1845, above quoted was a revenue law within that act and proceeded to decide the case on the merits.

The opinion of the Court delivered by Mr. Justice McLean is based upon three grounds:—

1. Because, in the title it is expressly declared to be an act to reduce the rates of postage, and for the prevention of frauds on the revenue of the Post Office Department.

2. Because, the object of the law (see § 10) was to prohibit the transmission of mailable matter over any post route, except by the United States. This act

put an end to postal opposition, which was beginning to spring up all over the United States.

3. Because the revenue of the Post Office Department, under the Act of July 2d, 1836, is paid into the Treasury of the United States, and disbursed in the service.

Now, it will be observed that not one of these grounds is applicable to the construction of the Money Order Act.

1. There is not the slightest intimation in the title or the act, that it is directly or indirectly to raise or affect the revenue. On the contrary, it is specifically stated in the title, and the act itself, to have been passed for an entirely different object, as has already been shown.

2. The second ground is equally inapplicable.

The establishment of post-routes, and the carriage of mailable matter thereupon, is, by law, a monopoly of the Government. The revenue derived is the fruit of this monopoly. But in the money-order system it is entirely different.

The jist of that act lies in the Authority of one post master to sell sight drafts, for small amounts upon another for a nominal fee, both being money order offices. Of course this is a branch of business done all over the Country between thousands and thousands of our citizens.

Had the Government under penalties monopolized the business of the issuing and transmission through the mails of all sight drafts for $50 and under, with the express object of aiding the treasury it might be claimed that such an Act was a revenue law.

3. The revenue of the Post Office Department is directed to be paid into the Treasury by Act of 1836. But by the 7th section of the money Order Act the surplus

of the fees is directed to be paid to the Post Master General, under § 3, of the Act of 1825 (See that Act.)

The next case which may be cited in support of the government is that of Warner *vs.* Fowler, 4 Blatchford, C. C. Repts., 311.

In this case, Warner sued Fowler, then postmaster, for the wrongful detention of certain letters.

The defendant took the necessary steps to have the case removed into the U. S. Circuit Court, "claiming "that the act for which he was sued was done by him "under the revenue laws of the United States, and "under color thereof, and in pursuance of a right "given to him by these laws."

The removal was claimed under section 3 of the Act of March, 2d, 1833, entitled "An Act to collect duties on imports," which in part is as follows: That in any case where suit or prosecution shall be commenced in a court of any state against any officer of the United States or other person, for or on account of any act done under the revenue laws of the United States or under color thereof, or for or on account of any right, authority or title set up or claimed by such officer or other person, under any such law of the United States, it shall be lawful for the defendant in such suits, &c., &c.

The case having been under this section removed into the Circuit Court, the plaintiff thereupon moved to have the case remanded, on the ground that the Post Office laws were not revenue laws within the meaning of those terms in the section above quoted.

Upon this case we observe :—

1. The defendant claimed that the Acts committed were done by him under the revenue laws of the United States and under color thereof and in pursuance of a right given to him by those laws."—No particular laws are specified, but on the motion to remand, the broad ground is taken that the Post Office laws were not revenue laws. In support of the plea in this case

it is unnecessary thus to claim. That certain of the Post Office laws may be revenue laws we are not required to dispute.

(2.) The Act of July 2d, 1836, provides that the revenue arising in the Post Office Department shall be paid into the Treaury of the United States. But the money order Act makes special provision for the disposition of any surplus which may arise under that act.

If it had been treated or regarded as a revenue Act, it would have allowed the surplus under it to be disposed of under the Act of 1836, above quoted. But not so; it especially provides that the surplus, if any shall be paid over to the Post Master General, under the Act of March 3, 1825.

(3.) The decision of this case is mainly based upon the authority of the case of the United States *vs* Bromly, 12 Howard. That that case has no real applicability to the question under discussion, we think has already been shown. The decision in this case was made March 17, 1859.

We respectfull request the attention of the court to the opinion of Mr. Justice Johnson, N. Y. Circuit in the case of Michel *vs.* Post Master James, annexed ~~is a part of this brief~~ as an appendix to this Brief we respectfully Submit.

For the foregoing reasons the limitation of two years is the only statutory time in which the indictment in this case could be found.

It should, therefore, be certified to the Circuit Court that § 32 of the Crimes Act enacts the only Statute of limitations applicable to the offense charged in this indictment.

ABRAM WAKEMAN,
Of Counsel for Defendant.

U. S. CIRCUIT COURT.

Decided January 1876

THE UNITED STATES, ON THE RELATION OF IVAN C. MICHEL

against

THOMAS L. JAMES, U. S. POST MASTER AT NEW YORK CITY &c.

OPINION.

JOHNSON.—CIRCUIT JUDGE.

"The question upon the merits presented in this case is, whether a clause of the Act of Congress approved March 3, 1875, entitled 'An Act making appropriations for sundry civil expenses of the Government, for the fiscal year ending June 30, 1875, and for other purposes,' is, or is not constitutional. The clause referred to increases the rate of postage upon third-class matter from one cent for two ounces to one cent an ounce. The ground of fact on which it is claimed that this clause was not constitutionally enacted is that the clause originated in the Senate, and was not an amendment to a bill for raising revenue originating in the House of Representatives. The provision of the Constitution which is claimed to render invalid the clause in question is this: "All bill for raising revenue shall originate in the House of Representatives, but the Senate may propose or concur with amendments, as on other Bills." (Con. art. I sec. 7., subd. 1.)

Certain legislative measures are unmistakably bills for raising revenue. These impose taxes upon the people, either directly or indirectly, or lay duties, imposts, or excises for the use of the Government, and give to the persons from whom the money is exacted no equivalent in return, unless it be the enjoyment in common with the rest of the citizens of the benefits of good government. It is this feature which characterizes bills for raising revenue. They draw money from the citizens; they give no direct equivalent in return.

In respect to such bills, it was reasonable that the immediate representatives of the tax-payers should alone have the power to originate them. Their immediate responsibility to their constituents and their zealous regard for the pecuniary interests of the people, it was supposed, would render them especially watchful in the protection of those whom they represented. But the reason fails in respect to bills of a different class. A bill regulating postal rates for postal service provides an equivalent for the money which the citizen may choose voluntarily to pay. He gets the fixed service for the fixed rate, or he lets it alone, as he pleases, and as his own interests dictate. Revenue beyond its cost may or may not be derived from the service and the pay received for it, but it is only a very strained construction which should regard a bill establishing rates of postage as a bill for raising revenue within the meaning of the Constitution. This broad distinction existing, in fact, between the two kinds of bills, it is obviously a just construction to confine the terms of the constitution to the case which they plainly designate. To strain those terms beyond their primary and obviovs meaning, and thus to introduce a precedent for that sort of construction, would work a great public mischief. Mr. Justice story, in his Commentaries on the Constitution (Sec. 880), puts the same construction upon the language in question, and gives his reasons for the views he sustains, which are able and convincing. In Tucker's Blackstone only, so far as authorities have been referred to, is found the opinion that a bill for establishing the Post Office operates as a revenue law. But this opinion, although put forth at an early day, has never obtained any general approval, but both legislative practice and general consent have concurred in the other view. Another question has arisen which has some similarity with that under discussion, and which, unless adverted to, might give rise to misapprehension. Thus, in the United States *vs.* Bromley, 12 How., 88, the question was